

**FAIR POLITICAL PRACTICES COMMISSION**  
**Memorandum**

**To:** Chairman Randolph, Commissioners Blair, Downey, Huguenin, and Remy

**From:** John W. Wallace, Assistant General Counsel  
Luisa Menchaca, General Counsel

**Subject:** Adoption Regulation 18735.5: Filing Dates for Assuming Office, Annual, or Leaving Office Statements of Economic Interests for Multi-Agency Filers of Joint Powers Insurance Agencies

**Date:** August 9, 2005

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**I. Executive Summary**

Under the Political Reform Act of 1974 (the “Act”)<sup>1</sup> individuals holding positions that involve the making or participation in the making of governmental decisions which could foreseeably have a material financial effect on any economic interest are required to file periodic statements of economic interests. These individuals file assuming office statements,<sup>2</sup> annual statements, and leaving office statements. The information required to be disclosed on these statements, as set forth in the agency’s conflict of interest code, varies from agency to agency. An individual who serves more than one agency is generally required to file these statements for each agency, or may file an expanded statement (designated employees may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of an expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original).

In 1990, a new type of statutory filer was added to the Act. Assembly Bill 2297 added two new provisions which permitted individuals who had reporting requirements for more than one joint powers insurance agency, to elect to be a multiagency filer by notifying the Commission, and each agency with which the individual was under contract, that his or her statements of economic interests were on file with the Commission (in lieu of filing with the contracting agencies) and available upon request. The multiagency statements of economic interests would provide information disclosing economic interests in real property within the state, and all income received during the applicable time period. Proposed regulation 18735.5 sets forth with specificity the filing dates for assuming office, annual, and leaving office

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<sup>1</sup> Government Code §§ 81000 – 91014. Commission regulations appear at Title 2, §§ 18109-18997, of the California Code of Regulations. All references herein are to the Government Code unless otherwise indicated.

<sup>2</sup> In some cases the assuming office statement is actually an initial statement filed with 30 days after the effective date of the conflict of interest code. (§ 87302(b).)

statements of economic interests for multiagency filers, consistent with Commission verbal advice.

## II. Analysis

**Background:** The Act was adopted by the voters of California in 1974. The purpose for the conflict-of-interest provisions of the Act was to ensure that public officials, whether elected or appointed, would “perform their duties in an impartial manner, free from any bias caused by their own financial interests or the financial interests of persons who have supported them.” (§ 81001(b).) In furtherance of this goal, the Act requires that “[a]ssets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided. (§ 81002(c).)

A “public official” is broadly defined, in part, as any “member, officer, employee or consultant of a state or local government agency.” (§ 82048.) “Consultant” is defined by regulation 18701(a)(2) as “an individual who, pursuant to a contract with a state or local government agency:

“(A) Makes a governmental decision whether to:

“1. Approve a rate, rule, or regulation;

“2. Adopt or enforce a law;

“3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;

“4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;

“5. Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;

“6. Grant agency approval to a plan, design, report, study, or similar item;

“7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

“(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a

position specified in the agency's Conflict of Interest Code under Government Code Section 87302."

With respect to consultants, the Commission has advised that a consultant<sup>3</sup> position should be designated in the code, but that the scope of disclosure be established on a case-by-case basis at the discretion of the agency's executive director (or analogous position).<sup>4</sup>

Disclosure requirements of "public officials" fall into two separate categories. "Statutory filers" must disclose all of their economic interests. Statutory filers historically were limited to those persons listed in § 87200, which include persons holding positions such as elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments (and candidates for any of the elected offices set forth above), file pursuant to § 87200.

With respect to persons holding other governmental positions, historically it has been within the discretion of the agency (with approval of the code reviewing body) as to whether those persons file disclosure statements and how much they must disclose, based on their ability to make or participate in making governmental decisions. This is accomplished by designation of the position in a conflict of interest code, making the person holding that position a designated employee. Section 82019 provides that "designated employee" means any officer, employee, member, or *consultant* of any agency whose position with the agency:

"(1) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the Constitution, unless the position is elective or solely secretarial, clerical, or manual.

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<sup>3</sup> According to the Commission's definition of the term "consultant," a firm cannot be a consultant, because a consultant must be an individual. (Regulation 18701(a)(2).) It is the employees of the firm, who will actually be performing the duties under the proposed contract, who may be consultants if their activities are described by the term "consultant." (*Herscher* Advice Letter, No. A-92-278.) The rationale behind limiting the term "consultant" to natural persons is that the actual decisionmaker, as in the case of a public official, will be an individual.

<sup>4</sup> Specifically, the Commission has advised that the following language (found in the Commission's own code at regulation 18351) be added to an agency's conflict-of-interest code: "Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation: the (executive director or executive officer) may determine in writing that a particular consultant, although a 'designated position,' is hired to perform a range of duties that are limited in scope and thus not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The (executive director's or executive officer's) determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code."

“(2) Is elective, other than an elective state office.

“(3) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.

“(4) Is involved as a state employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.”

**1990 Amendment:** In 1990, a new type of statutory filer was added to the Act.<sup>5</sup> Assembly Bill 2297 added two new provisions. New § 87350 provides:

“Notwithstanding any other provision of this title, a person required to file more than one assuming office statement, statement of economic interests, or leaving office statement, due to his or her status as a designated employee for more than one joint powers insurance agency, may elect to file a multiagency statement disclosing all investments in entities doing business in the state, all interests in real property located within the state, and all income received during the applicable time period, in lieu of filing the disclosure statements for each agency.

“The filer shall notify the Commission of his or her decision to become a multiagency filer. This status shall continue until revoked by the filer.”

AB 2297 also added a new subdivision to § 87500 that provides:

“(m) Designated employees under contract to more than one joint powers insurance agency and who elect to file a multiagency statement pursuant to Section 87350, the original of the statement with the Commission which shall be the filing officer, and a statement with each agency with which they are under contract, declaring that their statement

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<sup>5</sup> Even prior to 1990, designated employees, including consultants, who were required to file statements of economic interests under more than one agency’s conflict-of-interest code, or under Article 2 for a different jurisdiction, could expand their statements of economic interests to cover reportable interests in both jurisdictions, and filed copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original in a signed and verified by the designated employee as if it were an original. Section 82035 defines “jurisdiction” as: “The region, county, city, district or other geographical area in which [the agency] has jurisdiction. Real property shall be deemed to be ‘within the jurisdiction’ with respect to a local government agency if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.”

of economic interests is on file with the Commission and available upon request.”

### **III. Discussion of Proposed Regulatory Action**

Since 1990, the Commission has provided oral advice and assistance in complying with section 87350. Proposed regulation 18735.5 describes with greater specificity the requirements of §§ 87350 and 87500(m). Subdivisions (a)(1) and (2) describe the basic statutory rule in § 87350. Subdivision (b)(1) through (3) clarify the filing requirements applicable to the three types of multiagency statements of economic interests. It provides:

*“(1) Assuming Office Statements of Economic Interests:*

*“(A) The multi-agency assuming office statement of economic interests shall be filed within 30 days of assuming office with a second joint powers insurance agency. This multi-agency assuming office statement of economic interests will satisfy the reporting requirements for any additional joint powers insurance agency in which the individual serves as long as the individual is continuously designated in the conflict of interest code of at least two joint powers insurance agencies.*

*“(B) The multi-agency assuming office statement of economic interests shall disclose reportable investments and interests in real property held on the date of assuming office, as well as income (including loans, gifts and travel payments) received during the 12 months prior to assuming office.*

*“(2) Annual Statements of Economic Interests:*

*“(A) The multi-agency annual statement of economic interests shall be filed by April 1, each year. A multi-agency annual statement of economic interests may be filed as long as the individual is continuously designated in the conflict of interest code of at least two joint powers insurance agencies.*

*“(B) The multi-agency annual statement of economic interests shall disclose reportable investments and interests in real property held, and income (including loans, gifts, and travel payments) received during the previous calendar year, provided that the period covered on the first multi-agency annual statement shall begin on the day after the last day of the period reported by the individual in his or her multi-agency assuming office statement of economic interests.*

*“(C) If an individual assumes office between October 1 and December 31 and files a multi-agency assuming office statement of economic interests pursuant to this section, that individual need not file an*

*annual statement of economic interests until one year later than the date applicable under subsection (b)(2)(A) above.*

*“(3) Leaving Office Statements:*

*“(A) The multi-agency leaving office statement of economic interests shall be filed within 30 days of leaving office as defined in this subdivision. As used in subdivision (b)(3) of this regulation, the date of ‘leaving office’ for a multi-agency filer is the date the filer is no longer designated in the conflict of interest codes of at least two joint powers insurance agencies. A filer who continues to serve for a single joint powers insurance agency must file statement of economic interests under that agency’s conflict of interest code.*

*“(B) The multi-agency leaving office statement of economic interests shall disclose reportable investments and interests in real property held, and income (including loans, gifts and travel payments) received during the period between the closing date of the last multi-agency statement filed and the date of leaving office.*

*“(C) If an individual leaves office as defined in subsection(b)(3)(A) of this regulation between January 1 and the filing deadline for his or her multi-agency annual statement of economic interests, the multi-agency leaving and annual statement of economic interests may be combined as long as the combined multi-agency statement of economic interests is filed within 30 days of leaving office or by April 1, whichever is the earlier due date.”*

Finally, subdivision (c) requires the filer to list all the employing agencies on the statements, and subdivision (d) clarifies that the requirements of the regulation are in addition to any other requirements imposed on designated employees with statewide jurisdiction. Subdivision (c) is new and has not been the subject of previous oral advice. In the past, filers have just reported their private sector employer or a list of all the agencies with which the private sector employer contracted. The new language would establish a consistent rule for reporting this information.

### **III. Staff Recommendation**

Staff recommends that the Commission adopt the regulation to clarify application of § 87350 to employees of multiple joint powers insurance agencies.